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FILE NO. 57180/00001

May 28, 2013

Via Electronic Filing

Hon. Michael A. Shipp
UNITED STATES DISTRICT COURT
JUDGE
Clardson S. Fisher Building & US Courthouse
402 E. State Street, Courtroom 6E
Trenton, NJ 08608

Re: In Re New Jersey Tax Sales Certificates Antitrust Litigation
Civil Action No. 3:12-cv-01893-MAS/TJB

Dear Judge Shipp:

We write on behalf of the undersigned defendants in the above-captioned action to respond to plaintiffs' ("Named Plaintiffs") motion (the "Preliminary Approval Motion") seeking (i) preliminary approval of the proposed settlement between Named Plaintiffs and defendant Robert E. Rothman (the "Rothman Settlement") and (ii) preliminary certification of a settlement class with respect to the Rothman Settlement. Please accept this letter brief in lieu of a more formal brief in response to the Preliminary Approval Motion.

Pursuant to the proposed settlement, Named Plaintiffs, on behalf of the proposed class, will release all claims against Mr. Rothman in return for: (i) his agreement to cooperate with Named Plaintiffs' counsel (including making himself available as a witness), (ii) a \$200,000 payment, and (iii) certain other consideration. Named Plaintiffs do not intend to provide notice to the putative settlement class at the present time, and instead have proposed deferring

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the provision of class notice—and final approval of the Rothman Settlement—for a period of up to two years. *See* Preliminary Approval Motion at 8, 21. The proposed settlement class potentially encompasses thousands of individuals and entities allegedly injured over an eleven-year period as a result of supposedly unlawful conduct at thousands of individually-conducted tax-lien auctions that took place in 566 separate municipalities across the state of New Jersey.

In an effort to avoid unnecessary waste of this Court's time and resources, defendants proposed that Named Plaintiffs' counsel include language in the preliminary approval order making clear that preliminary certification of the proposed settlement class would be without prejudice to the non-settling defendants' right to oppose certification of any non-settlement class in this action. Notwithstanding Named Plaintiffs' admission in their papers that preliminary approval of a partial settlement must be without prejudice to the non-settling defendants' anticipated opposition to class certification, Named Plaintiffs refused to include appropriate language in the proposed order. *See* Preliminary Approval Motion at 12-13 (the preliminary approval order must be “without prejudice to the defenses and positions of the non-settling defendants as to any issue, including certification of the litigation classes”) (*quoting Gates v. Rohm and Haas Co.*, 248 F.R.D. 434, 436 n.2 (E.D. Pa. 2008)).

Accordingly, we respectfully request that any order preliminarily approving the Rothman Settlement include the following language:

The entry of this Order is without prejudice to any of the defenses and positions of the non-settling defendants as to any issue, including, without limitation, the issue of whether or not the alleged class, or any class, could or should appropriately be certified as a litigation class.

Inclusion of such language is entirely consistent with precedent in this Circuit. *See Gates*, 28 F.R.D. at 448.

Finally, we expressly reserve our right to contest or seek other relief in connection with the offering of any testimony by Mr. Rothman at any class certification hearing or otherwise on grounds including, but not limited to, that his testimony—which has been promised to plaintiffs in exchange for a release of claims—has been procured in violation of public policy. *See* 18 U.S.C. § 201 (prohibiting “giv[ing], offer[ing], or promis[ing] anything of value to any person, for or because of the testimony under oath...to be given by such person as a witness...”); *In re Telcar Group, Inc.*, 363 B.R. 345, 355 (Bankr. E.D.N.Y. 2007) (rejecting proposed settlement with a fact witness because “by having...a pecuniary incentive within the settlement, the testimony of any witness in this position is necessarily open to scrutiny and challenge”); *Rocheux Int’l. of New Jersey v. U.S. Merchants Fin. Group, Inc.*, Civ. 06-6147, 2009 WL 3246837, at *3

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(D.N.J. Oct. 5, 2009) (Brown, J.) (observing that “agreements to compensate fact witnesses [are] unenforceable for lack of consideration and being contrary to public policy”).

Respectfully Submitted,

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